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ARIZONA SUPREME COURT

In the Matter of:

**PETITION TO AMEND RULES
5, 6, AND 11 AND APPENDIX A
OF THE ARIZONA RULES OF
PROCEDURE FOR EVICTION
ACTIONS**

Supreme Court No. R-21____
(expedited consideration
and emergency adoption
requested)

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend the rules specified above as proposed in Appendix A. This petition is made on an emergency basis because it is necessary to implement new legislation on September 29, 2021, the general effective date for 2021 legislation.

Proposal

The Arizona Legislature and Governor enacted SB 1322 (Laws 2021, Chapter 243) (to be codified at A.R.S. § 22-206), which provides parties, attorneys, and witnesses the right to appear remotely at special or forcible detainer (“eviction”) initial appearances in justice courts. Arizona Revised Statutes § 22-206 states:

§ 22-206. Virtual appearance; detainer actions

Notwithstanding any other law, in a special detainer or forcible detainer proceeding before the court, any party, including an attorney or witness upon written notice to the court, shall be permitted to participate at the initial appearance remotely by using a telephone or video conference connection. If the court continues a contested matter to a later date, at the discretion of the court, the court may require all parties, attorneys and witnesses to participate in person.

This statute provides a right for landlords, tenants, attorneys, and witnesses to appear remotely upon written notice in eviction initial appearances. The statute, which appears to be a procedural rule adopted by statute, does not affect the discretion of the court to adopt procedural rules to implement this right that provides remote access in addition to the access provided by the statute. This may include remote access for additional proceedings and by additional means, such as in response to telephone rather than written requests or routine remote access without the need for any request.

The statute makes it easier for landlords, tenants, attorneys, and witnesses to appear and participate in eviction initial appearances. It will perpetuate the success of the remote appearance mandate adopted on an interim basis by Arizona courts during the COVID-19 pandemic. Data gathered by our limited jurisdiction courts shows that participation by the parties in hearings concerning eviction matters significantly increased through the authorized use of virtual or telephonic appearance. For these reasons, the rules proposed are intended to promote the

availability of remote appearance in the administration of this option by our courts. Without some specific direction by court rule, the new statutory language may be misinterpreted and actually work to the detriment of self-represented litigants: a party may argue, and a court may agree, that participants may not participate remotely unless they submit a notice in writing to the court before the initial appearance. A requirement to file a written notice would be inconsistent with Rule 11(b)(2) which permits the defendant to answer the complaint orally, rather than in writing, at the initial appearance.

By legislative design, eviction initial appearances occur quickly, generally between three and five days following service. Without direction by this court, under the new statute, a court may require a self-represented party wishing to appear remotely to find a prescribed form, download it, and get it to the court before the initial appearance. Even if a self-represented litigant could find the form and mail it, the form almost certainly would not arrive at the court in time to be available prior to the hearing.

Additionally, the statute cannot limit the ability of a court to conduct its proceedings remotely without a request from a party. This ability was particularly important during the health emergency.

The proposed rule will clarify that a court must permit any participant – party, witness, or attorney – to appear by telephone or video conference connection

without the need for a written notice in advance of the hearing. The proposed rule amendments clarify that notice can be provided by email, facsimile, or other electronic method, including by telephone, and need not have an original signature. The proposed rules support the legislative intent to expand virtual hearings in eviction matters.

Finally, the statute is part of Title 22, which applies only to justice and municipal court proceedings. The proposed rule, consistent with the intent of the legislation, clarifies that this option is available in all eviction proceedings, whether they are filed in justice court or superior court. By addressing the issue in the rules, the court will apply the same standards to all eviction proceedings, regardless of forum.

In summary, petitioner recommends that, to implement the statute in a manner that provides participants the best remote access to eviction proceedings, Eviction Rules 5, 6, and 11 be amended to clarify 1) that the court has the discretion to offer the option of remote appearance in all cases filed in justice court or superior court; 2) that participants must be permitted to appear remotely without written notice to the court; and 3) that written notice by any means includes by facsimile, email, or other electronic process, without an original signature. These proposed changes are shown in Appendix A of this petition. Also recommended is

a change to the Residential Eviction Information Sheet (Appendix B¹) to inform parties of the opportunity for remote appearance.

Conclusion

The undersigned requests that the Supreme Court consider and adopt the changes recommended below on an emergency basis at the Court's August, 2021 agenda with an effective date of September 29, 2021 and with a comment period to follow.

RESPECTFULLY SUBMITTED this 1st day of July, 2021.

By: /s/

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¹ This form is referred to as the "Residential Eviction Information Procedures Sheet" as APPENDIX A in the existing rule; however, the existing APPENDIX A does not include "Procedures." It is commonly referred to as the "REIS." Accordingly, we recommend that "Procedures" gets struck from Rule 5(A)(5), or that "Procedures" is inserted into APPENDIX A.

Appendix A

Rule 5. Summons and Complaint; Issuance, Content and Service of Process

a. Summons. The summons in an eviction action shall be a document separate from the complaint, shall be issued in accordance with applicable statutory provisions, and shall identify the defendants to the action. If the name of a defendant is unknown, the summons and complaint may name a fictitious defendant and any occupants of the property. The court shall liberally grant leave to amend the complaint and summons to reflect the true names of defendants if they become known to the plaintiff. The summons shall also include the following:

(1) Name of the court and its street address, city, ~~and~~ telephone number, facsimile number, email address, and website address;

(2) Date and time set for the trial of the matter; that a landlord, tenant, attorney, or witness may participate in the initial hearing through telephone or video conference by contacting the court for directions at least two hours before the hearing, to ensure the court has time to make necessary arrangements;

(3) Notice that if the tenant fails to appear, a default judgment will likely be entered against the tenant, granting the relief specifically requested in the complaint, including removing the tenant from the property; and

(4) A disclosure in substantially the following form: “Requests for reasonable accommodation for persons with disabilities should be made to the court as soon as possible.”

(5) In residential property actions only, on a separate page served upon the tenant, the information contained in the Residential Eviction ~~Procedures~~ Information Sheet substantially in the form included as Appendix A to these Rules.

b. - f. [No changes]

Rule 6. Service of Pleadings, Other Papers and Orders After Complaint

a. General Requirement of Service. Except as otherwise provided in these Rules or ordered by the court, every pleading subsequent to the original complaint, every written motion, every written notice, appearance, demand and similar paper and any attachments, and every order shall be served upon each of the parties to the action. A written motion or request that is filed with the court, but not served as required by this rule, shall be considered an impermissible ex parte communication.

(1) Filing of documents may be made by delivering the documents to the appropriate justice court or superior court file counter for date stamping.

(2) The court may permit a party to file documents directly with the judge in open court.

(3) Filing may also be accomplished by prepaid, first class mail to the court, whereupon the date of receipt by the file counter shall be considered the date of filing.

(4) Each court shall permit any party, attorney, or witness to submit notice via email, facsimile, telephone, or other electronic process, that the party, attorney or witness will attend the initial appearance remotely. Such notice shall not require an original signature. Such notice is a means of exercising the option of appearing remotely. Failure to provide it shall not be a basis for denying a remote appearance that can be provided or challenging the validity of a remote appearance that occurred.

b. - e. [No changes]

Rule 11. Initial Appearance and Trial Procedures

a. In General. All proceedings in eviction actions shall be recorded, either through a recording device or by a court reporter. Each court shall provide the option for landlords, tenants, attorneys, and witnesses to participate in an initial appearance by video or telephone conference. A court may require notice of up to two hours before the hearing as is necessary to avoid delaying hearings. If one participant appears remotely, all other participants must also be permitted to appear remotely. Each court may provide this option routinely to all participants in all initial appearances.

b. On the date and at the time set for the initial appearance, and after announcing the name of the plaintiff and the defendant, the court shall:

(1) Call the case, identify the parties and any attorneys or representatives present and ascertain that they are properly authorized to represent the parties to the action. As provided by Arizona Supreme Court Rule 31, no property manager or other agent shall be allowed to represent a party unless he or she is the property owner, a sub lessor entitled to possession, or an attorney licensed to practice law and in good standing in Arizona.

(2) State or summarize the material allegations contained in the complaint.

(3) Ask the defendant whether the defendant contests the allegations contained in the complaint.

b. - e. [adjust lettering only]

Appendix B

APPENDIX A

RESIDENTIAL EVICTION INFORMATION SHEET

(PUBLICATION AND DISTRIBUTION REQUIRED BY THE ARIZONA SUPREME COURT)

Notice. A landlord must provide a tenant with written notice saying why the eviction process has started. The tenant should have received this notice before this lawsuit was filed or with the summons.

Rent cases. If this lawsuit has been filed for not paying rent, the tenant can stop it and continue living in the residence by paying all rent now due, late fees, attorney's fees and court costs. After a judgment has been granted, reinstatement of the lease is solely in the landlord's discretion. Inability to pay rent is not a legal defense and the judge cannot give more time to pay, even if the tenant is having financial problems.

Before Court. Eviction cases move through the court system very quickly. If the tenant disagrees with the landlord's allegations, the tenant is encouraged to file a written answer. The answer form available from the justice court allows the tenant to admit or deny the allegations and explain his or her position. If the tenant cannot afford to pay the answer fee, he or she may apply for a waiver or deferral of that fee. If a tenant believes that the landlord owes him or her money, the tenant may under some circumstances file a counterclaim. The summons states that a trial will occur on the date listed, but due to the high volume of cases, a trial may not occur then. A landlord, tenant, attorney, or witness will be permitted to participate in the initial hearing by video or telephone conference and should contact the court at least two hours before the hearing to obtain information about how to connect to the hearing. If the tenant fails to appear, and the landlord or his attorney is present, a judgment will probably be entered against the tenant. Tenants can represent themselves or arrange for lawyers to represent them. The court will not provide a lawyer.

At Court. At the time and date listed on the summons, the judge will start calling cases. If both parties are present, the judge will ask the tenant whether the complaint is true. If the tenant says "no", he or she will need to briefly tell the judge why. If the reason is a legal defense, the judge will need to hear testimony from both sides and make a decision after a trial. After talking to the landlord or its attorney, a tenant may wish to agree to what the landlord is requesting by signing a "stipulation". A stipulation is an agreement under which the parties resolve the dispute on the basis of what the agreement says. Only matters contained in the written agreement can be enforced. These agreements should be clear and understandable by both parties. Most stipulations include judgments tenants.

Continuances. Either party may ask that the court date be delayed. The court will agree only if there is a very good reason. A delay will be no more than three business days. There is no assurance a delay will be granted and parties should come to court prepared for trial and bring necessary witnesses and documents.

After a Judgment. If a landlord receives a judgment, it may apply for a writ of restitution to remove the tenant(s) and all occupants. Writs of Restitution are served by constables, who will direct the residents to leave. A tenant may avoid the difficulties associated with a writ of restitution by vacating the property and

returning the keys to the landlord. This ends the tenants' possession of the residence. A tenant will have five (5) days to vacate the premises unless the court has found a material and irreparable breach of the lease by the tenant, in which case the tenant has only twelve (12) to twenty-four (24) hours to vacate. A judgment will probably appear on a tenant's credit report for several years. Parties wishing to appeal from a judgment have five days to do so after the judgment is entered and can obtain forms and information from the court filing counter. If a tenant wants to remain in the rental home during the appeal, the tenant must also pay an appropriate bond and continue to pay rent into court as it becomes due. If the tenant prevails the court will dismiss the case. Absent an appeal, the tenant will need to obtain the landlord's approval and enter a new lease to continue living in the residence.

Sources of Additional Information. You can get copies of the Arizona Residential Landlord Tenant Act, the Arizona Mobile Home Parks Residential Landlord and Tenant Act and the Long Term Recreational Vehicle Rental Space Act from a library or from links on the Arizona Judicial Branch Eviction Actions web page, <https://www.azcourts.gov/eviction>. For information on the Residential Eviction Action process, please visit: <https://www.azcourthelp.org>. If you wish to consult an attorney, you may want to contact the Arizona State Bar Attorney Referrals Line or, in Maricopa County, Community Legal Services. Contact the court in other counties for similar referrals.